Supreme Court, U. S.
FILED
DEC 6 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-664

VENTURA COUNTY,

Appellant,

vs.

GULF OIL CORPORATION,

Appellee.

On Appeal From the United States Court of Appeals for the Ninth Circuit.

MOTION TO AFFIRM.

WILLIAM V. KASTLER,
JAMES L. O'LOUGHLIN,
1801 Avenue of the Stars, Suite 1402,
Los Angeles, Calif. 90067,
(213) 553-3800,
Attorneys for Appellee Gulf Oil Corporation.

Of Counsel:
FRED LAYMON, Los Angeles,
BRADLEY F. STUEBING, Los Angeles,
KEN BROWN, Washington, D.C.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

	Page
Statement	1
Argument	3
Conclusion	5

TABLE OF AUTHORITIES CITED

Cases	Page
Federal Power Commission v. Oregon, 349 U.S. 435 (1954)	3
Hancock v. Train, 426 U.S. 167 (1976)	4
International Paper Co. v. County of Siskiyou, 515 F.2d 285 (9th Cir. 1974)	3
Kleppe v. New Mexico, 426 U.S. 520 (1976)	3
Mid-Northern Oil Co. v. Montana, 268 U.S. 45 (1925)	3
Oklahoma Tax Commission v. Texas Co., 336 U.S. 342 (1949)	3
Texas Oil and Gas Corp. v. Phillips, 277 F.Supp. 366 (W.D. Okla. 1967), aff'd, 506 F.2d 1303 (10th Cir. 1969), cert. denied, 396 U.S. 829 (1969)	3
Wilson v. Cook, 327 U.S. 474 (1946)	3
Statutes	
Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2744 [codified at 43 U.S.C.A. §§1701 et seq. (Supp. 1977)]	4
National Forest Management Act, Pub. L. No. 94-558, 90 Stat. 2949 [codified at 16 U.S.C.A. §§ 1600 et seq. (Supp. 1977)]	4
United States Code, Title 42, Sec. 4321	4
United States Code Annotated, Title 16, Sec. 1612	4
United States Code Annotated, Title 16, Sec. 1643 (c)	4
United States Code Annotated, Title 43, Sec. 1712 (c)(9)	4

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-664

VENTURA COUNTY,

Appellant,

vs.

GULF OIL CORPORATION,

Appellee.

On Appeal From the United States Court of Appeals for the Ninth Circuit.

MOTION TO AFFIRM.

Statement.

This is a direct appeal from a decision of the Ninth Circuit Court of Appeals entered August 3, 1979,[1] which affirmed an order of the District Court for the Central District of California, dated April 7, 1977.

[1]The Court of Appeals' opinion is reported at 601 F.2d 1080 (9th Cir. 1979) (advance citation) and is set forth at pages 1-20 of the Appendix to appellant's Jurisdictional Statement.

The case involves the applicability of a county zoning ordinance to federal forest lands under lease for oil and gas development. Ventura County (appellant) seeks to prohibit the federal government's lessee (appellee Gulf Oil) from developing the oil and gas reserves until the lessee complies with the County's land use permit system. The prohibition will be temporary if the permit is granted and permanent if the permit is denied. The County permit process consists of environmental analyses, public hearings and appeals which duplicate the extensive permit procedures of the responsible federal agencies. The lessee received all federal permissions and directives and proceeded to drill for oil in the federal forest. The question is whether the County can enjoin further development by the federal government's lessee until the County decides whether and on what conditions to give its permission.

The District Court found that application of the zoning ordinance to the federal lands leased by Gulf would present a significant threat to identifiable federal interests, namely encouraging the development of oil and gas on the public lands of the United States. The Court of Appeals upheld the District Court because the "local ordinances impermissibly conflict with congressional regulation of Gulf's activities on government land" (601 F.2d at 1082; Appendix at 2) and because "the local ordinances stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." 601 F.2d at 1086; Appendix at 17.

ARGUMENT.

The decision below is so obviously correct as to warrant no further review. State interference with Congressional use of federal lands has never been allowed by this Court or any other federal court.[2] It matters not whether Congress chooses to accomplish its purposes directly or through the use of private persons. As noted by the Court of Appeals, a similar State attempt to assert dual regulatory authority over a federally permitted project by a private company on federal lands was turned aside in *Federal Power Commission v. Oregon*, 349 U.S. 435 (1954) (*See* discussion at 601 F.2d at 1085; Appendix at 12), and, most recently, in *Kleppe v. New Mexico*, 426 U.S. 520 (1976), this Court blocked State interference with the Congressionally authorized use of federal lands stating that "a different rule would place the public domain of the United States completely at the mercy of state legislation." 426 U.S. at 543; *see* discussion

---

[2]None of the federal cases cited by appellant involved any interference with federal interests. The state taxation at issue in *Mid-Northern Oil Co. v. Montana*, 268 U.S. 45 (1925); *Oklahoma Tax Commission v. Texas Co.*, 336 U.S. 342 (1949); *Wilson v. Cook*, 327 U.S. 474 (1946), and *International Paper Co. v. County of Siskiyou*, 515 F.2d 285 (9th Cir. 1974), did not hinder or delay the authorized use of federal lands. In *Texas Oil and Gas Corp. v. Phillips*, 277 F.Supp. 366 (W.D. Okla. 1967), aff'd., 506 F.2d 1303 (10th Cir. 1969), cert. denied, 396 U.S. 829 (1969), the Tenth Circuit allowed a forced pooling order by the Oklahoma Corporation Commission to apply to a federal lease where there was "no significant threat to any identifiable federal policy or interest." 506 F.2d at 1306. The District Court had found that federal authorities specifically approved the forced pooling order and that the order would not adversely affect the federal royalty interest. 277 F.Supp. at 371. By contrast, in the present case there is no federal approval of the County action and the federal interest will either be delayed or terminated through enforcement of the county zoning ordinance.

at 601 F.2d 1083; Appendix at 5-7; *see also Hancock v. Train* 426 U.S. 167, 179 (1976) (denouncing State regulation of "federal installations and activities" except when and to the extent there is a clear and unambiguous Congressional mandate).

Contrary to the County's suggestion, the decision below will not place local residents living near federal lands at the mercy of an insensitive federal bureaucracy. Congress has provided for an extensive scheme of federal regulation (*see* summary at 601 F.2d at 1083-84; Appendix at 7-9) and has mandated under the National Environmental Policy Act, 42 U.S.C. §§4321 *et seq.*, and other statutes,[3] that federal officials duly consider local interests and co-operate with local governments in making use of federal lands. Congress and the Courts have provided a potent remedy under NEPA if federal officials fail to discharge this responsibility. For reasons unexplained, the County in the District Court voluntarily dismissed its NEPA complaint against the federal officials who conducted the environmental analysis and approved Gulf's drilling permit.[4]

---

[3]By the October, 1976 enactment of the Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2744 [codified at 43 U.S.C.A. §§1701 *et seq.* (Supp. 1977)] and the National Forest Management Act, Pub. L. No. 94-558, 90 Stat. 2949 [codified at 16 U.S.C.A. §§1600 *et seq.* (Supp. 1977)], Congress reaffirmed its preeminent power and interest in regulating the use of federal lands but required federal agencies to co-operate with local governments and invite public participation in the development of land use plans. 43 U.S.C.A. §1712(c)(9); 16 U.S.C.A. §§1612 and 1643(c).

[4]The record shows that before approving Gulf's drilling permit the forest service contacted Ventura County planning officials and obtained the list of 56 conditions which the County had imposed on another oil company drilling outside the forest but in the same general vicinity. Over a year had elapsed in the processing of that county permit including a number of public hearings and appeals.

Conclusion.

The dual system of land use regulation asserted by Ventura County would subordinate lands and energy resources which belong to all the people of the United States to local wishes which may not always reflect national needs. Congress has sought to balance the competing interests through an extensive regulatory framework which makes substantial provision for local concerns without sacrificing national objectives. The County proposal would upset this balance. It would delay the federal royalty interest, adversely affect the marketability of federal oil and gas leases and subject Congressional efforts to secure energy independence to a patchwork of local regulation and prior restraints.

We respectfully submit that appellant presents no substantial question for the consideration of this Court and that the decision of the Court of Appeals should be affirmed without further review.

Respectfully submitted,

WILLIAM V. KASTLER,
JAMES L. O'LOUGHLIN,
Attorneys for Appellee Gulf Oil Corporation.

Of Counsel:
FRED LAYMON, Los Angeles,
BRADLEY F. STUEBING, Los Angeles,
KEN BROWN, Washington, D.C.